IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 48 of 2003

DATE OF DECISION: 15.03.2007

Commissioner of Income Tax-II, Ludhiana

…Appellant

Versus

M/s Harnam Singh Darshan Singh, Near Grain Market, Khanna

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjeev Bansal, Advocate,
for the appellant-revenue.

M.M. KUMAR, J. (Oral)

The revenue has approached this Court by filing the instant appeal under Section 260A of the Income Tax Act, 1961, challenging the view taken by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, in ITA No. 931/Chandi/96, dated 23.8.2002, in respect of assessment year 1993-94. It has been claimed that the following substantial question of law would arise for our determination:-

> "Whether in law, the ITAT, Chandigarh Bench, Chandigarh, was correct in upholding the CIT (Appeals) order, cancelling the penalty of Rs. 2,39,458/- u/s 271D of the I.T. Act, 1961, totally disregarding, the provisions

of section 269SS/269T which are applicable in the case of all six deposits with the assessee as the deposits under reference were not related to sale of agricultural produce through the assessee to be covered by the Board's Circular No. 387 dated 6.7.1984 and No. 556 dated 23.2.1990."

We have heard learned counsel for the revenue and find that the application of Circular No. 387, dated 6.7.1984 and Circular No. 556, dated 23.2.1990, could be considered only if there are findings returned by the Appellate Authority, namely, Commissioner of Income Tax (Appeals) or by the Tribunal that the transaction between the assessee, who is *kacha arhtia*, and the seller of the agricultural produce are in respect of non-agricultural items. On the contrary the findings recorded by the CIT (A) is that there is nothing on record to show that the deposits were bogus and non-genuine so as to attract the provisions of Section 269SS of the Act as it stood on the relevant date. In the absence of such findings of fact, no question of law would arise much less any substantial question of law.

Dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 15, 2007

Pkapoor